

LAW DAY 2005
Remarks of Chief Justice Clifford W. Taylor
April 25, 2005

In a few days, the Michigan Supreme Court will proclaim that May 2005 is Juror Appreciation Month. Now, although our Court issues resolutions from time to time, to mark important occasions or honor those who have rendered outstanding service to the Court, we do so sparingly. So why are we making this special declaration? Why dedicate the month of May to honoring jurors?

As some of you no doubt know, the American Bar Association has made the jury the focus of this year's Law Day celebrations. But the question remains: why honor jurors? More basically, why are juries important?

To answer that question, we begin by looking to history. Some have traced the jury's very earliest origins to Egypt in 2000 B.C., where an eight-member body called the *Kenbet*, made up of four members from each side of the Nile, presided in legal proceedings. Other scholars find the origins of the modern jury in the *dikasts* of ancient Greek democracy. In our own state of Michigan, the People of the Three Fires -- the Chippewa, Ottawa and Potawatomie tribes -- resolved disputes, excluded wrongdoers and healed community rifts in their sentencing circles, in which every member had an opportunity to be heard and to offer resolutions. Whatever the jury's origins, there seems to have been a recognition, in many different cultures and during many different periods in history, that community involvement in legal proceedings promotes the ends of justice.

We pick up this thread in European and particularly British history. In 1215, the Magna Carta established as a matter of constitutional right that no freeman shall be seized, imprisoned or dispossessed except by the legal judgment of his peers. In the same year, Pope Innocent III condemned the practice of trial by ordeal. Less than 60 years later, according to Pollock and Maitland's *A History of English Law*, jury verdicts "were rapidly expelling all the older [methods of] proof."

So enshrined was the jury trial in the British legal system that the loss of the right to trial by jury became one of the catalysts for the American Revolution. British authorities prosecuted American colonists for revenue violations in admiralty courts without juries, rather than in common pleas courts, where juries could have acquitted and freed protesters. Trials for treason were to be conducted in England, thus removing the defendants entirely from the participation or scrutiny of their fellow citizens. So it was not surprising that, in the Declaration of Independence, Thomas Jefferson cited Britain's conduct "depriving us, in many cases, of the benefits of Trial by Jury" as one of the reasons requiring American's separation from Britain. Also not surprisingly, the founders guaranteed the right to a jury trial in the most lasting way they could: by preserving that right through the Constitution.

The founders of this country clearly understood, and were even willing to die for, the lesson of centuries of British jury trials: that the jury was a bulwark against tyranny.

With the community as a check, the sovereign could not simply ride roughshod over individual rights. Indeed, the jury was an essential element of American democracy, balancing the power of the state with the power of the community. As Thomas Jefferson said in 1788, “I consider trial by jury as the only anchor every yet imagined by man, by which a government can be held to the principles of its constitution.”

Fast forward to 2005. Last Tuesday, April 19, a column appeared in the *Detroit Free Press*, entitled, “Reporting, reluctantly, for jury duty.” Please note – I’m not faulting the columnist, Desiree Cooper, in any way, because I think she has captured the reaction that many people have when they’re called for jury service. She says of reporting for jury service, “I’d love to say that I did it with a glad heart, but that wouldn’t be true. I was both deflated and disgusted ...” Of the others who reported for jury service, she says, “My first impression was that I’d never seen such a group of crabby Americans, unless you count the ones who mail their taxes at the post office at midnight on April 15.” She ends her column by saying that she was not chosen for a jury, but adds, “But to be honest, I felt like I’d missed a fascinating opportunity to peek inside the democratic process. The next time, I’ll be ready for duty.”

That final observation is right on the money. I have heard many people complain when they’re called for jury duty. But I’ve never heard anyone say that it wasn’t a profoundly important and, yes, fascinating experience. Indeed, a 2004 ABA survey reported that most of those who have served on a jury would like to do so again. Once they’re involved in the process, people understand just how vital a role they are playing in the justice system, and how their service affects others’ lives. But the problem, as many of the judges and lawyers in the audience will attest, is getting people to report willingly for jury duty in the first place. How many of you have gotten this question from your non-lawyer friends: “I’ve been called for jury duty – any suggestions about how I can get out of it?” Some people don’t even bother to show up at court at all. There was one memorable day, in February 2002, when 95 people failed to report for jury duty in Wayne Circuit Court’s criminal division, forcing the court to cancel several trials. Judges throughout this state have had to haul no-show jurors into court for contempt proceedings. That is a national problem – statistics indicate that 20 percent of those called for jury duty simply do not respond to the summons. Too, by failing to report for jury duty, citizens are unwittingly creating a situation where we have juries that are less representative of the community. That is a very sad state of affairs, one that would appall our country’s founders, who put their lives on the line for the right to trial by jury.

Obviously, jury service involves a sacrifice of time, convenience, and often of money. Many of our courts are very sensitive to this issue and do what they can to assure that jurors’ time is used as efficiently as possible.

But I think there’s another reason why people are dismayed by the call to jury service. Everyone’s had that nightmare where they find themselves about to take a final exam without ever taking the course. For many people, that’s what jury service is: like being suddenly compelled to take a college-level course in a difficult and unfamiliar subject. The course could last for days, weeks, or even months. Your instructors use

technical jargon that you have never heard, don't understand, and will probably never use again. Although the course includes a lot of detailed information and complex issues, you are not allowed to take notes, ask questions, or consult your classmates while the class is in session. And on the final exam, you and your classmates have to answer the questions the same way, or none of you can go home. In other words, traditional jury duty seems to hamper, not help, the jury in its deliberative process.

Recognizing this, courts around the country are looking at major reforms in the way the legal system utilizes and affects jurors, and Michigan is no exception. Following a recent meeting of the Conference of Chief Justices, I asked my colleague Steve Markman to inventory jury reform measures from other states and prepare a comprehensive proposal for Michigan. The Court's goal, in considering these measures, will be to enhance the jury's truth-seeking and deliberative functions.

Some of these measures have already been published for public comment as part of a proposed revision of the rules of criminal procedure. For example, a suggested amendment to MCR 6.414 would allow jurors to take their notes into final deliberations. Another proposed amendment would allow jurors to ask witnesses questions, subject to screening by the trial judge, who would also be the one to pose the questions to the witness. An amendment to MCR 6.414 subrule H would authorize courts to give jury instructions before closing arguments. Still other proposals would permit jurors to discuss the case at certain points before final deliberations; allow the jury to have recordings or transcripts of testimony during final deliberations; and provide jurors with a reference document that includes trial exhibits, pretrial jury instructions, relevant statutory passages, and other information. As you know, jurors are currently permitted to take notes in criminal trials, subject to the trial judge's approval, but a suggested change to MCR 6.414 would allow judges to actually encourage note taking. Still other possible changes would include inviting jurors to ask questions about final jury instructions and allowing the trial judge to impartially sum up the evidence at the end of the trial, while instructing the jury that it must determine the weight of the evidence for itself.

In short, my colleagues and I are working towards practical reforms that will help jurors in the pursuit of truth. Ultimately, we hope to follow such states as Arizona, California, New York, and Texas, in adopting our own comprehensive plan of jury reform.

At the same time, now more than ever, we in the bench and bar need to remind ourselves and the public that jury service is both a duty of citizenship and a high privilege – hence our observance of Juror Appreciation Month.

Jury service is an obligation that we as citizens owe to each other; as the French statesman Alexis de Tocqueville said, jury service “rubs off that private selfishness which is the rust of society.”

Too, most people, including even those who try to get out of jury service, would probably want a jury if they themselves were ever on trial for a crime. A recent ABA

survey indicates that the American people believe that the jury system works. By a margin of 78 percent to 17 percent, those surveyed agree with the statement that “the jury system is the most fair way to determine the guilt or innocence of a person accused of a crime.” Certainly juries have a huge impact – on millions of individual lives, on law enforcement, on society as a whole. With the exception of voting, no other civic activity affords such an opportunity for active participation in democracy.

On Thursday, the Court will make public its resolution proclaiming May 2005 as Juror Appreciation Month. I hope that all of you, especially those in the bench and bar, will join the Court in celebrating this fundamental right of our democracy and in honoring those who answer the call to jury service.

I close with the words of our own Justice Thomas McIntyre Cooley, one of the great Justices who served on the Michigan Supreme Court in the 19th Century:

“Jury trial, as an instrument of justice, as an educator of the people, and as a means of making them feel their responsibility in government, is by far the best system of trial yet devised.”

Thank you.
